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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/252,842	02/19/1999	CHARI STYLLI	AUOBIO.014A	4954

27167 7590 07/18/2002

AURORA BIOSCIENCES CORPORATION  
C/O KNOBBE, MARTENS, OLSON & BEAR, LLP  
550 WEST C STREET  
SUITE 1200  
SAN DIEGO, CA 92101

EXAMINER

BEX, PATRICIA K

ART UNIT	PAPER NUMBER
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1743

15

DATE MAILED: 07/18/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

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<b>Office Action Summary</b>	<b>Application No.</b> 09/252,842	<b>Applicant(s)</b> STYLLI ET AL.	
	<b>Examiner</b> P. Kathryn Bex	<b>Art Unit</b> 1743	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 10 May 2002.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-3,6,10-12 and 20-24 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-3,6 and 20-24 is/are rejected.
- 7) ☒ Claim(s) 10-12 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All   b) ☐ Some \*   c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                  | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____  |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)         | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ | 6) <input type="checkbox"/> Other: _____                                    |

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on May 10, 2002 has been entered.

2. The cancellation of claim 8 is acknowledged and has been entered into the record.

### ***Claim Objections***

3. Claims 10-12 are objected as being in improper form because they are dependent on newly cancelled claim 8. Accordingly, claims 10-12 have not been further treated on the merits.

### ***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

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6. Claims 1-3, 20-21 and 24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kelso *et al* (WO 93/12431).

Kelso *et al* teach a system for conducting analytical procedures on multi-well plates. The system comprising a plurality of modular processing stations. The system further comprising computer controlled chemical storage module 22 for storing a plurality of multi-well plates 12. The plates comprising set of drug candidate compounds in the addressable wells 18 (Figs. 9, 10). The controller providing an automated robotic retriever 20 (page 23) to remove a subset (e.g. single multiwell plate) of said addressable chemical wells from the chemical storage module 22 (page 18). Next, delivering the removed multiwell plate to a bi-directional conveyor 166 (page 41, last paragraph). The conveyor then delivers the multi-well plate to an automated liquid handler 277, which aspirates compounds from less than all of the wells in the multiwell plate (page 53). The multiwell plate can be transported by the robot 20 to one of the other plurality of liquid handlers (e.g. wash dispensing station 30 or reagent dispensing station 26). The system is controlled by a master control module 16 which is pre-programmed (e.g. programmable) with various modes to control the appropriate mechanisms of the processing stations 22 to 36, e.g. aspirates compounds from less than all of the wells in the multiwell plate (page 35, section C and page 53). Note: the conveyor mechanisms include an access support surface, i.e. buffer, 92 situated at the ingress/egress of the storage module. The access support can includes a mechanism for moving, or sorting, the multi-well plate on the support surface independent of the robot 20 (page 29).

Kelso *et al* do not specifically recite the storage module containing at least approximately 3000 multi-well plates or the plates containing approximately 100,000 addressable locations.

However, would have been obvious to one of ordinary skill in the art at the time of the claimed invention to have constructed the storage module of Kelso *et al* which is capable of holding at least 3000 multi-well plates or multi-well plates containing approximately 100,000 addressable locations in order to increase processing throughput. Additionally, it has been held that the mere duplication of parts has no patentable significance unless a new and unexpected is produced. *In re Harza*, 124 PQ 378 (CCPA 1960).

7. Claims 6, 22-23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kelso *et al* (WO 93/12431) in view of Shuttleworth, Inc., "Flat Panel Display News" February 1996.

Kelso *et al* as discussed above, fail to teach a chemical plate buffer comprising a rack wherein the plates are stacked therein. Shuttleworth, Inc. "Flat Panel Display News" does disclose the use of a storage module which is operably linked with local plate buffers which accumulates and stacks a plurality cassettes before feeding them to a vertical conveyer of a storage unit, see page 5, paragraph 2 and Figure on same page.

Accordingly, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have included in the automatic analyzer of Kelso *et al* the cassette transportation with local buffers, as taught by Shuttleworth, Inc. "Flat Panel Display News", in order to greatly simplify the automation required and dramatically improve the total system reliability, see page 5, paragraph 1, last line.

#### ***Response to Arguments***

8. Applicant's arguments with respect to claims have been considered but are moot in view of the new ground(s) of rejection. See above Office Action.

*Conclusion*

9. No claims allowed.
10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to P. Kathryn Bex whose telephone number is (703) 306-5697. The examiner can normally be reached on Mondays-Thursdays, alternate Fridays from 6:00 am to 3:30 pm EST. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jill Warden can be reached on 308-4037.

The fax number for the organization where this application or proceeding is assigned is (703) 872-9310 for official papers prior to mailing of a Final Office Action. For after-Final Office Actions use (703) 872-9311. For unofficial or draft papers use fax number (703) 305-7719. Please label all faxes as official or unofficial. The above fax numbers will allow the paper to be forwarded to the examiner in a timely manner.

Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is (703) 308-0661.

*Kathryn Bex*  
P. Kathryn Bex  
Patent Examiner  
AU 1743  
July 9, 2002

*Jill Warden*  
Jill Warden  
Supervisory Patent Examiner  
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